

Information Commissioner's Office

Consultation:

Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Consultation Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our [privacy notice](#)

Q1 Is the draft code clear and easy to understand?

- ☐ Yes
- ☒ No

If no please explain why and how we could improve this:

In general, we find that the draft code is not difficult to read, however it is still leaves areas of ambiguity which in turn leads to confusion. This is particularly the case where words such as "unlikely" or "very difficult" are used which are leaning towards an action or activity being outside of the ICO's interpretation of the law, however there is no guidance as to when these activities are or could be acceptable. If there are no examples, then these actions could be more clearly outlined.

When we explore the areas around notification of individuals when their data is obtained via third parties additional examples around the exceptions would be useful particularly where the Commissioner views them as non-controversial such data obtained for the purposes of marketing suppression and/or data quality purposes (i.e. deceased, goneaway lists, etc.).

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

- ☐ Yes
- ☒ No

If no please explain what changes or improvements you would like to see?

Not in all places, the examples don't always have the level of complexity of real-world cases, assuming very traditional Controller and Processor roles. The examples are often of organisation and the impact on the consumer, further details on the processing that occurs within the supply chain would be useful particularly as the scope and coverage of the Code of Practice has been stretched to bring more areas of the supply chain under its purview. This particularly is in focus with the concentration on consent as an appropriate legal basis. More clarity and examples on how the Commissioner would view the capturing of consents for more complex processing activities would be of significant aid.

Q3 Does the draft code cover the right issues about direct marketing?

☐ Yes

☒ No

If no please outline what additional areas you would like to see covered:

Broadly, this guidance covers the main areas of Direct Marketing however channels which are still important to many advertisers such as postal marketing is significantly underserved with guidance and information limited and seems to focus more on the difference between door drops and addressed mail. Further to this it offers no guidance around the most appropriate legal basis and the challenges that maybe in faced by an organisation between prospecting and warm marketing as well as the processing attached to these campaigns.

The profiling and enrichment of data is an area which is fairly light on guidance, further examples with regards to what could be classed as "intrusive profiling" would be of significant benefit and would assist organisation in assessing risk in a manner which aligns with that of the Commissioners view.

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

☐ Yes

☒ No

If no please outline what additional areas you would like to see covered

In general the code feels like it is written for controllers which we understand are core actors in these processes, however details on areas which are often undertaken by Processors on behalf of Controllers would add significant clarity to further parts of the supply chain which play key parts in the Direct Marketing process but are not referred to within this code.

More details around cookies and other technology would be a tremendous boost to this code, particularly around RTB, adtech and in app advertising. The use of cookies other technology now more than ever linked to direct marketing and these areas feel light in terms of the how the Commissioner is applying the regulations to these areas.

Running through a Direct Marketing Campaign as an example would be of significant use in this area, particularly one per main channel would assist no end in creating a flow and helping organisations identify how the Commissioner would approach a fictitious campaign.

Q5 Is it easy to find information in the draft code?

☒ Yes

☐ No

If no, please provide your suggestions on how the structure could be improved:

In general, we feel that it isn't difficult to find information within this code. An increased glossary would further assist this and it would insure that we are using the same terminology as the Commission and misinterpretation are less likely to occur.

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

☐ Yes

☒ No

If yes, please provide your direct marketing examples :

Q7 Do you have any other suggestions for the direct marketing code?

More clarity and straightforwardness. The table which demonstrates what activities require consent under PECR, for example, is a good example of visually demonstrating and summarizing various scenarios. If this approach were to be applied to other areas of the code it would help with its understanding and ensuring that all readers have interpreted it the same way, as opposed to leaving room for misinterpretation.

Avoiding the use of ambiguous language such as unlikely, we would prefer that the Commissioner outlined the exceptions to the rule rather than leaving it unclear.

About you

Q8 Are you answering as:

- ☐ An individual acting in a private capacity (eg someone providing their views as a member of the public)
- ☐ An individual acting in a professional capacity
- ☒ On behalf of an organisation
- ☐ Other

Please specify the name of your organisation:

Edit

If other please specify:

Q9 How did you find out about this survey?

- ☐ ICO Twitter account
- ☐ ICO Facebook account
- ☐ ICO LinkedIn account
- ☒ ICO website
- ☐ ICO newsletter
- ☐ ICO staff member
- ☐ Colleague
- ☐ Personal/work Twitter account
- ☐ Personal/work Facebook account
- ☐ Personal/work LinkedIn account
- ☐ Other

If other please specify:

Thank you for taking the time to complete the survey